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REMARKS

Claims 1-41 are currently pending in the subject application and are presently under consideration. Claims 1-5, 6-11, 26, 27, 33, 34, and 38-41 have been amended as shown at pp. 4-18 of the Reply. In addition, the specification has been amended as shown at pp. 2-3 of the Reply.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

**I. Rejection of Claims 1 and 4-11 Under 35 U.S.C. §102(e)**

Claims 1 and 4-11 stand rejected under 35 U.S.C. §102(e) as being anticipated by Augart (US 6,778,524). It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Augart does not teach or suggest each and every limitation of applicants' claimed invention.

For a prior art reference to anticipate, 35 U.S.C. §102 requires that "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (quoting *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)).

The subject invention relates to determining the geographic location of Internet hosts. The location of an Internet host is determined by way of a data store and location codes extracted from router labels associated with nodes along the path from a computer system to the Internet host. The location can be corrected, as recited in amended independent claim 1 (and similarly recited in independent claims 7-11) by *determining a delay time associated with the network path and selectively correcting the location estimate according to the delay time associated with the network path*. For instance, a location estimate may be corrected if the time delay from the internet host to the node associated with the location estimate is greater than a threshold indicating that the Internet host and intermediate node are not geographically close.

Augart does not teach or suggest the aforementioned novel aspects of applicants' invention as recited in the subject claims. Augart teaches methods for determining the location of an Internet host by employing information associated with nodes along the path from a

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computer system to the internet host. However, as conceded in the Office Action, Augart is silent regarding time delay associated with a network path. (*See*, page 9)

Accordingly, applicants' representative respectfully submits that Augart fails to teach or suggest all limitations of applicants' invention as recited in independent claims 1 and 7-11 (and all claims that depend there from), and thus fails to make obvious the subject claimed invention. Therefore, it is readily apparent that this rejection should be withdrawn.

## **II. Rejection of Claims 27-32 and 38-41 Under 35 U.S.C. §102(e)**

Claims 27-32 and 38-41 stand rejected under 35 U.S.C. §102(e) as being anticipated by Biliris, *et al.* (US 2002/0078233 A1). It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Biliris, *et al.* does not teach or suggest each and every limitation of applicants' claimed invention.

Independent claims 27 and 38-41 have been amended to recite the limitations of dependent claim 33, *computing a dispersion metric representative of the accuracy of the location estimate of the location of the Internet host*. Biliris, *et al.* discloses methods for load balancing content requests amongst a plurality of content distribution networks. As conceded in the Office Action, Biliris, *et al.* fails to teach or suggest a dispersion metric as taught in the subject claim. (*See*, page 16) Moreover, the Examiner takes official notice to the fact that it would have been obvious to one of ordinary skill in the art at the time the invention was made to compute a dispersion metric in association with determining the geographic location of an Internet host. Applicants' representative respectfully avers to the contrary regarding the obviousness of employing a dispersion metric in connection with the method of Biliris, *et al.*, and traverses the aforementioned well known statements to request that the Examiner cite a reference in support of his position pursuant to MPEP 2144.03.

Accordingly, applicants' representative respectfully submits that Biliris, *et al.* fails to teach or suggest all limitations of applicants' invention as recited in independent claims 27 and 38-41 (and all claims that depend there from), and thus fails to make obvious the subject claimed invention. Therefore, it is readily apparent that this rejection should be withdrawn.

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**III. Rejection of Claims 2 and 3 Under 35 U.S.C. §103(a)**

Claims 2 and 3 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Augart (US 6,778,524) in view of Gray, *et al.* (US 4,891,761). It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Augart and Gray, *et al.*, alone or in combination, do not teach or suggest each and every limitation of applicants' claimed invention.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP §706.02(j). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Claims 2 and 3 depend from independent claim 1, and Gray, *et al.* fails to cure the above noted deficiencies of Augart with respect to such independent claim. Gray, *et al.* is cited to cure the deficiency of Augart with respect to *determining a time delay associated with a network path and selectively correcting the location estimate according to the delay time associated with the network path*. However, Gray, *et al.* is concerned with identifying geographic locations for the purpose of updating a digital map as it relates to a mobile *wireless* device. Gray, *et al.* teaches triangulation methods using fixed antennae with known geographic locations and time delays for receipt of transmissions between the antennae and mobile device. Contrary to suggestions in the Office Action, the mathematical models used to triangulate a location using the time delays in wireless communication are not applicable to wired network transmission across multiple nodes. Transmissions in wireless communication are straight line or line of site between the antenna and mobile device. The mathematical models for triangulation of a wireless device rely on a straight line transmission assumption. Transmissions on wireline are not in a

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straight line from transmitter to receiver and in fact may move from node to node across many disparate geographic locations. Furthermore, the Office Action improperly uses the applicants' disclosure of a *confidence metric representative of the accuracy of the location estimate according to the delay time* as reasoning for combining the prior art. However, there is no teaching or suggestion in either Augart or Gray, *et al.* to use a confidence metric based on time delay associated with a network path for correction of the location estimate. Therefore, there is no motivation to combine the prior art without using the applicants' claimed invention as a guide. Accordingly, withdrawal of this rejection is respectfully requested.

**IV. Rejection of Claims 12, 13 and 23-26 Under 35 U.S.C. §103(a)**

Claims 12, 13 and 23-26 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gray, *et al.* (US 4,891,761) in view of Augart (US 6,778,524). Independent claims 12 and 23-26 recite limitations employing time delays associated with network paths in determining the location of an Internet host. For the reasons discussed above with respect to claims 2 and 3, dependent from independent claim 1, it is readily apparent that this rejection should be withdrawn.

**V. Rejection of Claims 14 and 15 Under 35 U.S.C. §103(a)**

Claims 14 and 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gray, *et al.* (US 4,891,761) in view of Augart (US 6,778,524) as applied to claim 12 above, and further in view of Intriligator, *et al.* (US 6,356,842). Withdrawal of this rejection is respectfully requested for at least the following reason. Claims 14 and 15 depend upon independent claim 12, Intriligator, *et al.* fails to make up for the deficiencies discussed *supra* of Augart in view of Gray, *et al.* with respect to claim 12. Intriligator, *et al.* discloses methods for forecasting weather in space and fails to teach or suggest *determining a time delay associated with a network path and selectively correcting the location estimate according to the delay time associated with the network path*. Accordingly, it is readily apparent that this rejection should be withdrawn.

**VI. Rejection of Claims 16-22 Under 35 U.S.C. §103(a)**

Claims 16-22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gray, *et al.* (US 4,891,761) in view of Augart (US 6,778,524) as applied to claim 12 above, and further in

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view of Maine, *et al.* (US 5,515,062). Withdrawal of this rejection is respectfully requested for at least the following reason. Claims 16-22 depend upon independent claim 12, Maine, *et al.* fails to make up for the above noted deficiencies of Augart in view of Gray, *et al.* with respect to claim 12. Similarly to Gray, *et al.*, Maine, *et al.* discloses methods for locating a *wireless* portable device using a global radio telecommunications system and also fails to teach or suggest *determining a time delay associated with a network path and selectively correcting the location estimate according to the delay time associated with the network path*. Accordingly, it is readily apparent that this rejection should be withdrawn.

**VII. Rejection of Claims 33 and 34 Under 35 U.S.C. §103(a)**

Claims 33 and 34 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Biliris, *et al.* (hereinafter Biliris) (US 2002/0078233 A1). Claims 33 and 34 depend from independent claim 27, which is believed to be in condition for allowance in light of the above arguments with respect to such independent claim. Accordingly, withdrawal of this rejection is respectfully requested.

**VIII. Rejection of Claim 35 Under 35 U.S.C. §103(a)**

Claim 35 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Biliris, *et al.* (US 2002/0078233 A1) in view of Augart (US 6,778,524). Withdrawal of this rejection is respectfully requested for at least the following reason. Claim 35 depends upon independent claim 27; Augart fails to make up for the deficiencies of Biliris, *et al.* with respect to claim 27. Accordingly, it is readily apparent that this rejection should be withdrawn.

**IX. Rejection of Claim 36 Under 35 U.S.C. §103(a)**

Claim 36 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Biliris, *et al.* (US 2002/0078233 A1) in view of Augart (US 6,778,524) as applied to claim 35 above, and further in view of Gray, *et al.* (US 4,891,761). Withdrawal of this rejection is respectfully requested for at least the following reason. Claim 36 depends upon independent claim 27, Gray, *et al.* fails to make up for the deficiencies of Biliris, *et al.* in view of Augart with respect to claim 27. Accordingly, withdrawal of this rejection is respectfully requested.

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**X. Rejection of Claim 37 Under 35 U.S.C. §103(a)**

Claim 37 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Biliris, *et al.* (US 2002/0076233 A1) in view of Gray, *et al.* (US 4,891,761). Withdrawal of this rejection is respectfully requested for at least the following reason. Claim 37 depends upon independent claim 27, Gray, *et al.* fails to make up for the deficiencies of Biliris, *et al.* with respect to claim 27. Accordingly, it is readily apparent that this rejection should be withdrawn.

**CONCLUSION**

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP189USA].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

AMIN & TUROCY, LLP



Himanshu S. Amin  
Reg. No. 40,894

AMIN & TUROCY, LLP  
24<sup>TH</sup> Floor, National City Center  
1900 E. 9<sup>TH</sup> Street  
Cleveland, Ohio 44114  
Telephone (216) 696-8730  
Facsimile (216) 696-8731

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